IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

L.P.A.No.208 of 2000
in
Arb Petition St No.3l870 of l999

Mrs Reena K Lalwani and anr.. appellants
vs
Mrs Padma V Nanda .. Respondents

Mr Nasrat N Shah with Eva Almeida for appellants

Mr.S.K.Jain for respondents

CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated 3.ll.2004

P.C:

Heard advocates.

l. This appeal is directed against the order passed by the learned single Judge dismissing the arbitration petition under section 30 of the Arbitration Act, l940. By order dated 5.7.2000 the Division Bench was pleased to set aside the order of the learned single Judge on the ground that the petition under section 30 of the old Act could not be filed on the Appellate Side and the learned single Judge on the Appellate Side has no power to entertain the application under section 30 of the said Act. The decision of the Division Bench was reversed by the Supreme Court in Civil Appeal

No.77l2 of 200l. The Supreme Court held that in view of rule lB of the Bombay High Court (Appellate Side) Rules the division bench was not justified in setting aside the order of the learned single Judge on the ground of non maintainability of the arbitration petition on the Appellate Side.

2. Mr. Shah appearing for the appellant sought to reagitate the issue of maintainability of the petition on the Appellate Side on the ground that the Rules framed under section 44 of the Arbitration Act l940 ceased to be in force after the enactment of Appellate Side Rules. We are afraid we cannot entertain this submission as the issue is concluded by the order of the Supreme Court.

3. As far as the merit are concerned Mr. Shah raised two points. First, he urged that the application was made before the arbitrator for summoning the witnesses,which the objectors wanted to be examined in the proceedings. However, that application has been rejected. Thus an opportunity to lead evidence has been denied to the objector. The learned Arbitrator has given cogent reasons for rejecting the application which was made at the fag end of the proceedings. It was noted by the

Arbitrator that the objectors are taking the arbitration court for a ride by resorting to frivolous applications and though maximum opportunity was given to both the parties,every convenience was considered at every stage, the objectors are trying to take totally undue advantage, trying to take arbitration proceedings as a merry-go-round, insisting upon the technicalities of the Evidence Act. Considering the nature of the application the learned Arbitrator cannot be said to have committed any illegality in turning down the request for examining the witnesses.

4. The second submission of the learned counsel is that no opportunity was given to the objectors to lead evidence about the valuation and compensation.No such point was raised before the learned single Judge and therefore we are not inclined to allow the said point to be agitated in appeal. No other contention was raised before us. Thus we find no merit in the appeal and the appeal is accordingly dismissed.

No orders on the civil applications.